

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-238
Table of Allotments,)	RM-10820
FM Broadcast Stations)	
(Lancaster and Pickerington, Ohio))	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: November 14, 2003

Released: November 17, 2003

Comment Date: January 15, 2004

Reply Comment Date: January 30, 2004

By the Assistant Chief, Audio Division:

1 The Audio Division has before it a petition for rule making in which Franklin Communications Inc.,¹ licensee of Station WJZA(FM), Lancaster, Ohio, ("Petitioner"), proposes the reallocation of Channel 278A from Lancaster, Ohio, to Pickerington, Ohio, as the community's first local transmission service, and the modification of the license for Station WJZA(FM) to reflect the changes.

2 Petitioner filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.³

3 In support of the petition, Petitioner states that its proposal will serve the public interest, it would result in a preferential arrangement of allotments, and meets the requirements for reallocation set forth in *Change of Community R&O*. First, the allotment of Channel 278A at Pickerington is mutually exclusive with the current use of Channel 278C at Lancaster. Second, the community of Lancaster would not be deprived of its only local service.⁴ Third, the proposal would provide a first local aural transmission service at Pickerington, population 9,792 persons (2000 U.S. Census), which will result in a preferential arrangement of allotments over the retention of a fourth local transmission service at

¹ The rulemaking petition was filed by Skyway Broadcasting, Inc., former licensee of Station WJZA. Pursuant to an application for assignment of control granted on September 17, 2003, and consummated on October 1, 2003, Franklin Communications, Inc. is now the licensee of Station WJZA. Franklin Communications, Inc., is now the Petitioner in this matter. See File no. BALH-20050528AHI.

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service (2) Second full-time aural service (3) First local service (4) Other public interest matters [Co-equal weight is given to priorities (2) and (3)].

⁴ Stations WFCO(FM), WHOK(FM), and WLOH(AM) will remain in Lancaster.

Lancaster, population 35,335 persons (2000 U.S. Census). In addition, Petitioner includes information regarding the gain and loss of service resulting from the downgrade and reallocation. It states that the current operation provides 60dBu service to 480,223 persons, within an area of 2,526 sq. km., and the proposed operation will serve 770,210 persons within an area of 2,516 sq. km., with a net gain of 279,987 persons. Our engineering analysis shows that the current operation serves 441,943 persons, and that the proposed operation would serve 768,993 persons for a net gain of 327,050 persons. We seek comment on the potential loss of service from this proposal and the public interest benefits of the change of community.

4. In further support of the reallocation, Petitioner states that Pickerington is a community for allotment purposes, but denies that it is in the Columbus, Ohio Urbanized Area. Our analysis shows that, according to the 2000 Census, Pickerington is within the Columbus Urbanized area. Pickerington is a community for allotment purposes.⁵ Pickerington was founded in 1815, incorporated as a community in 1991, and is listed as a city in the U.S. Census. It has its own government and elected officials. However, because the move is from a city outside an urbanized area to one inside an urbanized area, they also include an analysis of the community's independence of the larger one using the factors delineated in *Faye and Richard Tuck*.⁶ They argue that an analysis of the community based on these factors supports a finding of independence.⁷ We seek comment on this issue.

5. We believe that the proposal warrants consideration because it would provide Pickerington with a first local aural transmission service without depriving Lancaster of its sole local transmission service. Channel 278A can be reallocated at Pickerington at a site 8.8 kilometers (5.4 miles) northeast of the community.⁸ Since Pickerington is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for this allotment.

6. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows.

<u>Community</u>	<u>Present</u>	<u>Channel</u> <u>Proposed</u>
Lancaster, Ohio	278A, 238B	238B
Pickerington, Ohio	---	278A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph

⁵ *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 101 (1988).

⁶ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁷ With respect to the first two *Tuck* factors (degree to which the station would provide coverage to the urbanized area and relative size and proximity), Petitioner states that the station's 70 dBu contour would cover 12% of the Columbus Urbanized Area. Our analysis shows that it would cover 17.3% of the Columbus Urbanized Area and 5.2% of the Newark, Ohio Urbanized Area. Pickerington's population is 1.4% of Columbus's population and is 26.6 kilometers from Columbus. Regarding the third factor, independence, Petitioner gives an exhaustive list of factors, showing that Pickerington is independent of Columbus. There are numerous business (1); two weekly newspapers and several websites (2); the residents perceive the community as a separate entity from Columbus (3); it has its own local government and elected officials (4); it has its own zip code and post office (5); there are numerous commercial establishments and other facilities (6); there are many opportunities for direct advertising to community residents (7); Pickerington provides most of its own municipal services (8).

⁸ Channel 278A can be allotted at Pickerington at coordinates 39-56-39 NL and 82-41-14 WL.

2 of the *Appendix* before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before January 15, 2004, and reply comments on or before January 30, 2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioners' counsel, as follows:

Dennis F. Begley, Esq.
Reddy, Begley and McCormick, LLP
2175 K Street, NW Suite 350
Washington, DC 20037

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁹

11. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte*.

⁹ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 (February 9, 1981).

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment Appendix

APPENDIX

1 Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2 Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3 Cut-off protection. The following procedures will govern the consideration of filings in this proceeding

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4 Comments and Reply Comments, Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6 Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.